

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

KATHRYN KNOWLTON, and
DANA McCORMICK,

Plaintiffs,

v.

Case No. 2020-CV-01660

CITY OF WAUWATOSA,
BARRY WEBER, and
DENNIS MCBRIDE

Defendants.

ANSWER AND AFFIRMATIVE DEFENSES TO PLAINTIFFS' COMPLAINT

Defendants City of Wauwatosa, Barry Weber and Dennis McBride, by their attorneys, Gunta Law Offices, S.C., submit their Answer to Plaintiffs' Complaint as follows:

NATURE OF ACTION

1. Admit that this is a civil action brought pursuant to 42 U.S.C. § 1983. Deny that Plaintiffs have suffered a constitutional violation; that the City of Wauwatosa and Mayor Dennis McBride issued "unlawful emergency orders;" or that Chief Barry Weber enforced any "unlawful emergency orders."

2. Admit that Plaintiffs allegations contained herein relate to the City of Wauwatosa's Emergency Order, which was signed by Mayor Dennis McBride on September 30, 2020. Further answering this paragraph, lack knowledge and information sufficient to form a belief as to the truth or falsity of Paragraph 2, and therefore deny the same.

3. Admit that on October 10, 2020, Plaintiffs and others were ordered to disperse from the lawn of Wauwatosa City Hall, and when they refused to do so, were verbally notified that they were in violation of the emergency order and given opportunities to disperse. Deny that Plaintiffs were “ordered to disperse without cause and forcibly arrested without the ability to comply with the dispersal order.” Further answering this paragraph, lack knowledge and information sufficient to form a belief as to the truth or falsity of Paragraph 3, and therefore deny the same.

JURISDICTION AND VENUE

4. Admit.

5. Admit.

THE PARTIES TO THIS COMPLAINT

6. Lack knowledge and information sufficient to form a belief as to the truth or falsity of Paragraph 6, and therefore deny the same.

7. Lack knowledge and information sufficient to form a belief as to the truth or falsity of Paragraph 7, and therefore deny the same.

8. Admit.

9. Admit that Defendant Barry Weber is Chief of Police for the Wauwatosa Police Department and is authorized to take actions pursuant to Wis. Stat. 66.09(13). Admit the reminder of Paragraph 9.

10. Admit that Defendant Dennis McBride is the Mayor of the City of Wauwatosa and is authorized to take actions pursuant to Wis. Stat. 66.09(8). Admit the reminder of Paragraph 10.

ALLEGATIONS OF FACT

11. Lack knowledge and information sufficient to form a belief as to the truth or falsity of Paragraph 11, and therefore deny the same.

12. Lack knowledge and information sufficient to form a belief as to the truth or falsity of Paragraph 12, and therefore deny the same.

13. Admit.

14. Admit that the Wauwatosa Common Council was not advised or notified of the Order until after it was made public on October 7, 2020.

15. Lack knowledge and information sufficient to form a belief as to the truth or falsity of Paragraph 15, and therefore deny the same.

16. Lack knowledge and information sufficient to form a belief as to the truth or falsity of Paragraph 16, and therefore deny the same.

17. Admit that at approximately 7:30 p.m., initial unlawful assembly announcements were made to the crowd that had formed at City Hall. Further answering this paragraph, lack knowledge and information sufficient to form a belief as to the truth or falsity of Paragraph 17, and therefore deny the same.

18. Lack knowledge and information sufficient to form a belief as to the truth or falsity of Paragraph 18, and therefore deny the same.

19. Lack knowledge and information sufficient to form a belief as to the truth or falsity of Paragraph 19, and therefore deny the same.

20. Lack knowledge and information sufficient to form a belief as to the truth or falsity of Paragraph 20, and therefore deny the same.

21. Lack knowledge and information sufficient to form a belief as to the truth or falsity of Paragraph 21, and therefore deny the same.

22. Lack knowledge and information sufficient to form a belief as to the truth or falsity

of Paragraph 22, and therefore deny the same.

23. Lack knowledge and information sufficient to form a belief as to the truth or falsity of Paragraph 23, and therefore deny the same.

24. Lack knowledge and information sufficient to form a belief as to the truth or falsity of Paragraph 24, and therefore deny the same.

25. Admit that after being arrested, Knowlton was taken into custody by a designated Crowd Control Arrest Team and escorted to a prisoner transport vehicle. Further answering this paragraph, lack knowledge and information sufficient to form a belief as to the truth or falsity of Paragraph 25, and therefore deny the same.

26. Lack knowledge and information sufficient to form a belief as to the truth or falsity of Paragraph 26, and therefore deny the same.

27. Lack knowledge and information sufficient to form a belief as to the truth or falsity of Paragraph 27, and therefore deny the same.

28. Lack knowledge and information sufficient to form a belief as to the truth or falsity of Paragraph 28, and therefore deny the same.

29. Lack knowledge and information sufficient to form a belief as to the truth or falsity of Paragraph 29, and therefore deny the same.

30. Lack knowledge and information sufficient to form a belief as to the truth or falsity of Paragraph 30, and therefore deny the same.

31. Lack knowledge and information sufficient to form a belief as to the truth or falsity of Paragraph 31, and therefore deny the same.

32. Lack knowledge and information sufficient to form a belief as to the truth or falsity

of Paragraph 32, and therefore deny the same.

33. Lack knowledge and information sufficient to form a belief as to the truth or falsity of Paragraph 33, and therefore deny the same.

34. Lack knowledge and information sufficient to form a belief as to the truth or falsity of Paragraph 34, and therefore deny the same.

35. Lack knowledge and information sufficient to form a belief as to the truth or falsity of Paragraph 35, and therefore deny the same.

36. Lack knowledge and information sufficient to form a belief as to the truth or falsity of Paragraph 36, and therefore deny the same.

37. Lack knowledge and information sufficient to form a belief as to the truth or falsity of Paragraph 37, and therefore deny the same.

38. Lack knowledge and information sufficient to form a belief as to the truth or falsity of Paragraph 38, and therefore deny the same.

39. Lack knowledge and information sufficient to form a belief as to the truth or falsity of Paragraph 39, and therefore deny the same.

40. Lack knowledge and information sufficient to form a belief as to the truth or falsity of Paragraph 40, and therefore deny the same.

41. Lack knowledge and information sufficient to form a belief as to the truth or falsity of Paragraph 41, and therefore deny the same.

42. Lack knowledge and information sufficient to form a belief as to the truth or falsity of Paragraph 42, and therefore deny the same.

43. Lack knowledge and information sufficient to form a belief as to the truth or falsity

of Paragraph 43, and therefore deny the same.

44. Lack knowledge and information sufficient to form a belief as to the truth or falsity of Paragraph 44, and therefore deny the same.

45. Lack knowledge and information sufficient to form a belief as to the truth or falsity of Paragraph 45, and therefore deny the same.

46. Lack knowledge and information sufficient to form a belief as to the truth or falsity of Paragraph 46, and therefore deny the same.

47. Lack knowledge and information sufficient to form a belief as to the truth or falsity of Paragraph 47, and therefore deny the same.

48. Lack knowledge and information sufficient to form a belief as to the truth or falsity of Paragraph 48, and therefore deny the same.

49. Lack knowledge and information sufficient to form a belief as to the truth or falsity of Paragraph 49, and therefore deny the same.

50. Lack knowledge and information sufficient to form a belief as to the truth or falsity of Paragraph 50, and therefore deny the same.

51. Lack knowledge and information sufficient to form a belief as to the truth or falsity of Paragraph 51, and therefore deny the same.

52. Lack knowledge and information sufficient to form a belief as to the truth or falsity of Paragraph 52, and therefore deny the same.

53. Lack knowledge and information sufficient to form a belief as to the truth or falsity of Paragraph 53, and therefore deny the same.

54. Lack knowledge and information sufficient to form a belief as to the truth or falsity

of Paragraph 54, and therefore deny the same.

55. Lack knowledge and information sufficient to form a belief as to the truth or falsity of Paragraph 55, and therefore deny the same.

56. Lack knowledge and information sufficient to form a belief as to the truth or falsity of Paragraph 56, and therefore deny the same.

57. Lack knowledge and information sufficient to form a belief as to the truth or falsity of Paragraph 57, and therefore deny the same.

58. Lack knowledge and information sufficient to form a belief as to the truth or falsity of Paragraph 58, and therefore deny the same.

59. Lack knowledge and information sufficient to form a belief as to the truth or falsity of Paragraph 59, and therefore deny the same.

FIRST CLAIM FOR RELIEF

(Violation of Plaintiffs' Fourth Amendment Rights to be Free from Unlawful Arrest)

60. These Defendants reallege and incorporate paragraphs 1 through 59 of this Answer.

61. Deny.

62. Deny.

63. Deny.

SECOND CLAIM FOR RELIEF

(Violation of Plaintiffs' Fourth Amendment Rights to be Free from Excessive Force)

64. These Defendants reallege and incorporate paragraphs 1 through 63 of this Answer.

65. Deny.

66. Deny.

67. Deny.

THIRD CLAIM FOR RELIEF
(Violation of Plaintiffs' Sixth Amendment Right to Counsel)

68. These Defendants reallege and incorporate paragraphs 1 through 67 of this Answer.

69. Deny the material allegations to the extent they related to any of the named defendants.

As further response, lack knowledge and information sufficient to form a belief as to the truth or falsity of Paragraph 69, and therefore deny the same.

70. Deny.

71. Deny.

FOURTH CLAIM FOR RELIEF
(Policy and Practice of Arrests for Unlawful Assembly in Violation of First and Fourth Amendment Rights)

72. These Defendants reallege and incorporate paragraphs 1 through 71 of this Answer.

73. Deny.

74. Deny.

75. Deny.

76. Deny.

DEMAND FOR RELIEF:

- A. Deny the Plaintiffs are entitled to the relief requested.
- B. Deny the Plaintiffs are entitled to the relief requested.
- C. Deny the Plaintiffs are entitled to the relief requested.
- D. Deny the Plaintiffs are entitled to the relief requested.
- E. Deny the Plaintiffs are entitled to the relief requested.
- F. Deny the Plaintiffs are entitled to the relief requested.

JURY TRIAL DEMAND

This Paragraph is a statement of Plaintiffs' legal positions and legal conclusions, and therefore requires no response to said alleged legal conclusions.

AFFIRMATIVE DEFENSES

1. Plaintiffs' Complaint fails to state a claim upon which relief can be granted.
2. Plaintiffs' state law claims are subject to the procedural prerequisites for bringing or maintaining a cause of action under § 893.80(1)(a) and (1)(b), Wis. Stats. and the exclusions, immunities and limitations on liability set forth in § 893.80, Wis. Stats.
3. Any injuries or damages suffered by the Plaintiffs were caused by their own conduct and/or the conduct and contributory negligence of a third party other than the Defendants.
4. The actions of the Plaintiffs were for the sole purpose of provoking law enforcement to arrest them and were done for no other lawful reason.
5. The Plaintiffs may have failed to mitigate their damages.
6. Plaintiffs' Complaint fails to state a cause of action against the City of Wauwatosa pursuant to Monell v. Department of Social Services of the City of New York, 436 U.S. 658, 98 S.Ct. 2018, 56 L.Ed.2d 611 (1978) since there can be no recovery for a federal civil rights violation where there is no constitutional deprivation occurring pursuant to government policy, custom, or practice.
7. All of the acts for the answering Defendants were in good faith and not motivated by malice or the intent to harm.
8. Plaintiffs are not entitled to punitive damages.
9. Defendants are entitled to qualified immunity from suit.

10. Defendants are entitled to discretionary act immunity.

WHEREFORE, Defendants demand judgment dismissing this matter and awarding them their costs and reasonable attorney's fees.

Dated at Wauwatosa, Wisconsin this 24th day of November, 2020.

GUNTA LAW OFFICES, S.C.
Attorneys for Defendants

/s/ Jasmyne M. Baynard

Gregg J. Gunta, WI Bar No. 1004322

Ann C. Wirth, WI Bar No. 1002469

John A. Wolfgang, WI Bar No. 1045325

Jasmyne M. Baynard, WI Bar No. 1099898

9898 W. Bluemound Road, Suite 2

Wauwatosa, Wisconsin 53226

Telephone: (414) 291-7979

Facsimile: (414) 291-7960

Emails: gjg@guntalaw.com

acw@guntalaw.com

jaw@guntalaw.com

jmb@guntalaw.com